

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 471 of 2015**

1. Sonu Ram son of late Ramlal aged about 21 years,
2. Vijay Kumar Yadav, son of late Ramlal Yadav, aged about 28 years,

Both are resident of village Thor, Police Station Gandhinagar, Civil and Revenue District- Sarguja (C.G.)

----Appellants**Versus**

- State of Chhattisgarh, through : Police Station Gandhinagar, Civil and Revenue District-Sarguja (C.G.).

---- Respondent

For Appellants : Smt. Savita Tiwari, Advocate.
For Respondent/State : Ms. Madhunisha Singh, P.L.

Hon'ble Shri Justice Prashant Kumar Mishra**Hon'ble Shri Justice Gautam Chourdiya****Judgment on Board by Justice Prashant Kumar Mishra****12/07/2019**

1. This appeal arises out of the judgment of conviction and order of sentence dated 25.02.2015 passed in ST No. 28/2013 by 3rd Additional Sessions Judge, Ambikapur, District-Sarguja (C.G.) whereby the appellants stand convicted and sentenced as under:

Conviction	Sentence
U/s. 364 of I.P.C.	Ten years R. I. and fine of Rs. 500/-, in default of payment 6 months S. I.
U/s. 302 of I.P.C.	Life imprisonment and fine of Rs. 500/- in default of payment 1 year S. I.
U/s 307/34 of I.P.C.	5 years R. I. and fine of Rs. 200/- in default of payment 1 month S. I.

2. The incident happened at about 6.30 pm on 25.11.2012. As per Dehati Nalisi vide (Ex.P/20) lodged at 15.10 hours on 26.11.2012 by Pratap (PW-8) son of the deceased-Shyamdhari Rajwade had gone to the village play ground for watching some sports activities. Both of them had seated at different places. At this point of time, the appellants reached there, caught hold of his father and took him to their house, seeing which he (Pratap) followed them and witnessed that appellants -Vijay Kumar Bargah and Sonu Bargah had taken his father inside their house; Sonu Bargah brought a sword and inflicted two-three blows on the head of his father. When this witness tried to intervene and separate them, Vijay Kumar Bargah caught hold of him and Sonu Bargah inflicted sword injuries over his head and left hand. FIR vide (Ex. P/26) was registered on the basis of Dehati Nalisi (Ex. P/20).

3. During further investigation, memorandum statement of

accused Sonu Bargah was recorded vide (Ex. P/7) and that of Vijay Kumar Bargah recorded vide (Ex.P/8) consequent to which one iron spade (*fawda*) was recovered from Sonu Bargah vide (Ex. P/11) and the sword was recovered from Vijay Kumar Bargah vide (Ex. P/12). The deceased was medically treated by Dr. K. R. Tekam (PW-06) who submitted his report vide Ex. P/16 and postmortem was carried out by Dr. K. R. Tekam (PW-6) who submitted his report vide (Ex.P/19). As per autopsy surgeon, mode of death is coma due to head injury leading to cardio pulmonary arrest. In the application for conducting the postmortem vide (Ex.P/18) and in the dead body inquest report (Ex.P/1) it was stated that the deceased had sustained two injuries over his head. The Investigating Officer also recorded the case diary statements of witnesses and thereafter submitted the charge-sheet.

4. During the course of trial, the prosecution examined as many as 16 witnesses namely -Samaylal (PW-1), Munnadas (PW-2), Ramprakash Singh (PW-3) Kailash Talukdar (PW-4), Madhuras (PW-5), K. R. Tekam (PW-6), Baghmen (PW-7), Pratap (PW-8), Shyam Sundar (PW-9), S. K. Singh (PW-10), Dr. F. H. Firdoshi (PW-11), Aaftab Ahmad (PW-12), Satyadev Ram (PW-13), Puran Kumar Talukdar (PW-14), D. S. Rajput (PW-15) and C. S. Netam (PW-16) to bring home the guilt of the accused. The appellants abjured the guilt but

did not examine any defence witness. In their statements under Section 313 of Cr. P. C. they have stated that Pratap (PW-8) has murdered his father after he found his father in an objectionable position with the appellants' mother. Thus, their case is that they have not committed the crime but it is the informant who had committed murder of his father.

5. The trial Court has convicted both the appellants for committing murder of the deceased while sharing common intention and for attempting on the life of Pratap (PW-8). The Trial Court has also convicted the appellants for committing offence under Section 364 of IPC.
6. Ms. Savita Tiwari, learned counsel for the appellants would refer to the judgment in the matter of **Bharosi and others Vs. State of M. P. reported in 2002 CrLJ 4322** and **1997 part (5) scale, 256 Mohan and ORS Vs. State of Uttar Pradesh** to argue that the appellants have not shared common intention, therefore, they would be responsible for their own individual act. She would also submit that the fatal blow having been caused by Sonu Bargah as mentioned in the Dehati Nalisi (Ex. P/20) and by Vijay Kumar Bargah as deposed in the Court, the entire prosecution case should be disbelieved and both the appellants deserve to be acquitted.
7. Per contra, Ms. Madhunisha Singh, learned State counsel would submit that there is clear, cogent and unimpeachable

evidence, in the form of statements of at least three eyewitnesses and there being evidence of overt act committed by both the appellants, the conviction is fully justified.

8. We have perused and scrutinised the record.
9. In the Dehati Nalisi (Ex.P/20) Pratap (PW-8) would state that both the appellants brought his father from the playground to their house, Vijay Kumar caught hold of his father and Sonu Bargah inflicted two-three sword blows. He would also state that when he tried to intervene and separate them Vijay Kumar Bargah caught hold of him and Sonu Bargah inflicted injuries over his head and left hand by means of sword. In his Court statement, he would state that after both the accused took his father inside their house, Vijay Kumar Bargah came out with a sword and inflicted blows over the head of his father due to which he fell down and thereafter Sonu Bargah also inflicted injuries by means of spade (*Fawda*) over the head of his father. He also states that when he tried to intervene, Vijay Kumar Bargah caught hold of him and Sonu Bargah caused head injuries to him. A closer look of both the statements alongwith the dead-body inquest report (ExP/1) and the requisition for postmortem (Ex.P/18) would highlight that in all these documents, information is available that the deceased had sustained two

head injuries which were “+ **shaped**”. Such injuries can be caused only when the injuries are more than one. In the Dehati Nalisi (Ex/20) two-three blows are attributed to accused Sonu whereas in the Court statement one blow is attributed to Vijay Kumar Bargah and another one to Sonu Bargah. Therefore, it is not a case where different appellant had been ascribed the role in causing head injuries in FiR (Ex. P/26) and in Court statement. True it is that as far as Vijay Kumar Bargah is concerned, the Court statement is the first occasion when Pratap (PW-8) would speak against him of causing head injuries to the deceased but at the same time, it is also to be seen that in all the statements there is one common feature that Vijay Kumar and Sonu Bargah both brought his father from the playground to their house, Vijay Kumar Bargah either caught hold of his father or caused injuries as per Court statement. Thus, Vijay Kumar Bargah has also played active role from the beginning to end. Allegation of causing head injuries by Sonu Bargah had been attributed in Dehati Nalisi (Ex. P/20) as well as in the Court statement, therefore, for him the version of the eyewitnesses is consistent throughout.

10. We have also appreciated another important aspect of the matter to consider the argument raised by learned counsel for the appellants that each of the appellant is responsible for his individual act. This argument needs to be considered

particularly in view of the fact that in the postmortem report (Ex.P/19) the deceased is said to have sustained only one injury. On anxious consideration and on meticulous examination of the evidence, we are not inclined to accept the above submission for the reason that when eyewitness account is available, medical evidence in the nature of postmortem report may not have supremacy. On this score, we may probably refer to the observation made by the Supreme Court in the matter of **Latesh @ Dadu Baburao Karlekar Vs. State of Maharashtra** reported in **(2018) 3 SCC 66** wherein the following has been held in paragraph 48:

“48. Coming to the role attributed to the other accused, PW 2 stated that accused Vishnu Bule (A-5), Anil Gadekar (A-6) and Sandeep Bhosale (A-4) assaulted on his right wrist, near his eye and abdomen region, while accused Sunil Kashinath Chandanshiva (A-1), Latesh (A-3) and Vijay @ Istriwala (A-2) assaulted his brother on his head and hands. It is settled law that oral evidence takes precedence over the medical evidence unless the latter completely refutes any possibility of such occurrence [Rakesh V. State of M.P (2011) 9 SCC 698; Kathi Bharat Vajsur V. State of Gujarat, (2012) 5 SCC 724 and State of U.P. V. Hari Chand, (2009) 13 SCC 542].”

11. On the basis of above settled legal view when we keep in mind the eyewitnesses' version attributing head injuries to both the appellants and there are other material which refers that the deceased had sustained two injuries over his head,

it is not a case of causing single injury, therefore, the submission that the deceased had suffered only one injury which can be attributed to any one of the appellants does not sustain.

12. It has also been argued that Bhagmen (PW-7) and Madhuras (PW-5) have been projected as eyewitnesses but they have not seen the occurrence, therefore, the prosecution case should be disbelieved. There is substance in this argument raised by the learned counsel for the appellants because the case diary statement of Bhagmen (PW-7) vide Ex. P/31 would disclose that in her first version of incident, as informed to the police, she had stated that when she and her daughter reached the spot they witnessed that her husband- Shyamdhari was lying near the wall outside the house of Sonu having sustained injuries oozing blood. Thus, this witness reached the spot after the occurrence and her Court statement that she had seen the occurrence is not to be believed. Madhuras (PW-5) is the brother of Bhagmen (PW-7). This witness was informed about the incident by Bhagmen (PW-7) herself and after receiving the information he reached the place of occurrence therefore, his reaching to the place of occurrence can not be prior in point of time, when Bhagmen (PW-7) herself reached the place and since we have already found that Bhagmen (PW-7) had not seen the occurrence, it is quite

impossible that on her information Madhura (PW-5) would have reached the place before Bhagmen (PW-7). Thus, this witness is also not an eyewitness.

13. Even if Madhura (PW-5) and Bhagmen (PW-7) are not found to be eyewitnesses, it would not dent the case of the prosecution because Pratap (PW-8) appears to be an eyewitness who is trustworthy and there is no discrepancy or material contradiction in his statement which would make his version of the incident doubtful.

14. It is also to be seen that PW-8 has himself suffered serious incised wound over his head as also on left hand caused by Sonu. His MLC (Ex. P/17) has been proved by Dr. K. R. Tekam (PW-6). Therefore, for this reason also his presence on the spot is not in doubt and consequently the version of the incident as told by this witness is found fully trustworthy.

15. For the reasons stated above, we do not find any ground to interfere with the impugned judgment of conviction and order of sentence to the appellants.

16. In the result, the appeal being bereft of any substance is liable to be and is, accordingly, dismissed.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

HEADLINES

Oral evidence takes precedence over the medical evidence
unless latter completely refutes any possibility of such occurrence.

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Sonu Ram & Another

Versus

State of Chhattisgarh

Judgment dated : **12/07/2019**